

STATEMENT OF WORK
Interagency Agreement Between
The Federal Highways Administration
and the
U.S. Fish and Wildlife Service, Regions 3, 4, and 5

A. PURPOSE/OBJECTIVE:

As the principal Federal partner responsible for administering the ESA, the U.S. Fish and Wildlife Service (Service) works with the Federal Highway Administration (FHWA) to use their existing authorities to protect and pursue the recovery of threatened and endangered species, and ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. FHWA and State Departments of Transportation (State DOTs) must complete project reviews and often are required to conduct informal or formal ESA consultations on projects that have the potential to affect listed species. The traditional project by project style consultation process has sometimes resulted in inconsistent monitoring and analysis approaches, differing minimization and mitigation practices, and issues with workload and consultation timeframes. These issues are particularly challenging for species that occur across multiple Service regions such as the Indiana bat. Therefore, FHWA and the Service (Regions 3, 4, and 5) are proposing to collaborate on a pilot effort to develop a regional conservation strategy for Indiana bats to help expedite the consultation process related to transportation projects. We envision the strategy will assist FHWA and State DOTs in identifying:

- proactive, Section 7(a)(1) of ESA conservation measures that are most suited and needed for the conservation of the species,
- conservation priority areas for avoidance and mitigation,
- standardized effects analyses with avoidance and minimization measures associated with project delivery types,
- consultation needs/types (no effect, not likely to adversely affect [NLAA]; likely to adversely affect [LAA]), and
- a framework for programmatic consultations (informal and/or formal), as appropriate.

A rangewide, landscape-level conservation strategy will provide more transparency and predictability to FHWA and State DOTs through proactive planning. This effort will provide information to FHWA and State DOTs that allow them to strategically *avoid* developing projects in high impact or high risk areas for Indiana bat. For those projects that can't avoid impacts, project proponents will be able to initially design their projects to effectively *minimize* impacts without the need to redesign projects. For those large scale projects or projects with greater impacts, priority conservation areas will be identified to *offset and minimize the impacts of the take*. This approach will result in a significant increase in the consistency of both project design and review, will significantly reduce consultation process timeframes, reduced delays, and contribute meaningfully to the conservation of the species. At the same time the strategy will reduce workload for the Service on many projects and allow focus on the more significant conservation priorities. While the scope of work initially focuses on

developing a rangewide conservation strategy for Indiana bats, similar tasks may be applicable to other bat species with similar habitat types and bat species dependent upon similar ecosystem functions. This effort will develop products that may assist in identifying conservation needs for additional bat species, should they become listed.

To facilitate this effort, FHWA will work with the Service to obtain the following available information: (1) FHWA and State DOT survey reports; (2) GIS data layers of State DOT's mist-net and/or acoustic surveys; (3) any other known Indiana bat location information; (4) inventory of any known future transportation projects and related FHWA and State DOT's activities that may impact Indiana bats or their habitat and; (5) any inventory information of State DOT lands and rights-of-way to determine compatibility with Indiana bat conservation.

B. AUTHORITY:

The authorities for this interagency agreement are SAFETEA-LU, 23 USC §502, 507 and 508, the Economy Act, 31 USC §1535, and the Endangered Species Act (ESA) 16 USC §1536.

C. BACKGROUND:

White-nose syndrome (WNS) along with habitat disturbance and destruction is decimating bat populations across eastern North America. Indiana bats, a federally listed species under the Endangered Species Act (ESA) are one of the species on the decline. Additional eastern bat species are likely to be listed under the ESA resulting in additional demands on the transportation project development process.

Indiana bats are found over most of the eastern half of the United States (an estimated 22 states). Section 7(a)(1) of the ESA requires federal Action Agencies to use their authorities to conserve listed species. Section 7(a)(2) of ESA requires federal Action Agencies to consult on any action that may affect a listed species. Consultation and mitigation approaches for impacts to Indiana bats vary greatly from state to state and have been rapidly changing in recent years. These variations and changes have caused uncertainty, conflict, delays, and large workloads for USFWS, FHWA, and state DOTs.

FHWA will collaborate with the USFWS to develop a broad, rangewide Conservation and Consultation Strategy for the Indiana bat, the first of its kind for a multi-state species. The sheer size of the species range (22 states), the bat's mobility, and the multiple USFWS regions dealing with this species, has created complicated guidance in many states. The goals of this strategy would be to provide consistency, predictability, streamlined and cost effective ESA consultations, reduced conflicts, and meaningful conservation of the Indiana bat.

The resulting informal programmatic consultation and conservation framework and tools, will simplify the consultation process allowing DOTs to respond to emergency situations and project planning with greater certainty. Advanced guidance will help State DOTs plan for impact avoidance, mitigation, and construction techniques that will facilitate project approvals. Finally, this process will be documented in a primer for developing

programmatic responses for other species with multistate ranges and multiple USFWS region responsibility.

D. TASKS AND DELIVERABLES:

Task 1. Service Regions will collaborate to develop a standard, biologically driven effects analysis and supporting tools for transportation projects across Regions 3, 4 and 5 related to Indiana bats. Subtasks include the following:

- Standardize project review process (e.g., effects analysis, triggers for consultation)
- Deconstruct project types into the various sub-components that define the stressor and species response effects.
- Develop analysis of effects for each of the sub-components identified in the project deconstruction.
- Determine project categories that are anticipated to result in no effect to Indiana bats.
- Determine project categories that may affect, but are not likely to adversely affect Indiana bats.
- Determine project categories that are likely to adversely affect Indiana bats.
- Establish consistent conservation measures to address the stressors and species response pathways and thereby avoid or minimize effects.
- Standardize survey recommendations
- Ensure products are compatible and available for uploading into the Service's IPAC system (which is designed to increase efficiency with project reviews)

Deliverable(s):

A guidance document containing the following elements:

- Conservation framework specific to transportation projects and Indiana bats.
- Excel spreadsheet with all DOT information (project types, links between project components and effects, conservation measures).
- Products compatible with uploading into the IPAC system.

Delivery schedule*: Within 18 months of execution of this agreement.

Task 2. Service will develop an Indiana bat conservation strategy for transportation projects across Regions 3, 4 and 5. Subtasks include the following:

- Produce a conservation strategy that clearly identifies:
 - geographic areas of Indiana bat activity;
 - survey recommendations;
 - activities that may affect Indiana bats (from Task 1);
 - avoidance and minimization measures (from Task 1);
 - proactive or mitigative conservation actions;
 - suggested compensation ratios; and
 - potential geographic locations for those conservation actions.
- Integrate the conservation strategy with other ongoing Indiana bat efforts

- Coordinate between Service Regions 3, 4, and 5 with the goal of developing a comprehensive approach to transportation projects.

Deliverable: Multi-region Indiana bat conservation strategy for transportation projects.

Delivery schedule*: Within 24 months of execution of this agreement.

Task 3. Service Regions 3, 4, and 5 will use the multi-region Indiana bat conservation strategy to develop consistent approaches to consultation(s). Subtasks include the following:

- Service will develop a range-wide Indiana bat informal programmatic consultation for transportation projects.
- Establish a framework for formal consultations for Indiana bats and transportation projects.

Deliverable(s):

- Programmatic range-wide informal consultation.
- Framework for formal consultations.

Delivery schedule*: Within 30 months of execution of this agreement.

Task 4. Service Regions 3, 4, and 5 will coordinate with FWHHA to determine the need for and strategy/schedule for developing programmatic formal or informal consultations at a state or sub-regional level.

Deliverable: Implementation plan for developing state or sub-regional programmatic consultations.

Delivery schedule*: Within 30 months of execution of this agreement.

Task 5. Service Regions 3, 4, and 5 will summarize the project processes and outcome/products so that the concepts may be utilized for future needs, if applicable.

Deliverable: Project Summary Report that describes the concepts used and the processes undertaken, products developed, and lessons learned.

Delivery schedule*: Within 33 months of execution of this agreement.

*The delivery schedule may need adjustment depending on the timing of funding allocation and the start date of any new required staffing, subject to the approval of the Contracting Officer.

E. PERIOD OF PERFORMANCE 33 Months

F. FUNDING FHWA will provide \$900,000 in funding to the Service.

Cost breakdown:

Region 3: Two-year FTE @ \$150,000/year¹ = \$300,000

Region 4: Two-year FTE @ \$150,000/year¹ = \$300,000

Region 5: Two-year FTE @ \$150,000/year¹ = \$300,000

¹ accounts for salary (GS-11/12), benefits, overhead, and travel.

If funding exceeds actual costs, the funding may be used for other incidental costs associated with this Scope of Work (including reimbursing other positions that work on tasks related to this Scope of Work). Service regions may use additional Service funds to hire positions at higher grades than are estimated in this Scope of Work.

If the Buyer cancels the agreement, the Seller may collect costs incurred prior to the cancellation of the agreement plus any termination costs.

G. CONTACTS

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